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LOK SABHA

The following Bills were introduced in Lok Sabha on the 23rd February, 1959:—

*BILL No. 11 of 1959.

A Bill further to amend the State Bank of India Act, 1955.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. This Act may be called the State Bank of India (Amendment) Act, 1959. Short title.

2. In section 22 of the State Bank of India Act, 1955 (hereinafter referred to as the principal Act),— Amendment of section 22.

(a) in clause (d) of sub-section (1), for the words "or managing director", the words, "managing director or legal or technical adviser" shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

'(4) In this section—

(a) "banking company" has the same meaning as in the Banking Companies Act, 1949:

(b) "manager" means the chief executive officer, by whatever name called, of a banking company;

(c) "private company" has the same meaning as in the Companies Act, 1956'.

3. In section 23 of the principal Act, the proviso shall be omitted.

Amendment of section 23.

*The President has, in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, recommended to Lok Sabha the introduction of the Bill.

Amendment
of section
33.

4. In section 33 of the principal Act,—

(a) in sub-clause (d) of clause (i), for the words “under any law for the time being in force in India”, the words “by or under any law for the time being in force in India other than companies with limited liability” shall be substituted; 5

(b) for clause (xii), the following clauses shall be substituted, namely:—

“(xii) the transacting of pecuniary agency business on commission;

(xiii) the entering into contracts of indemnity, surety-ship or guarantee with specific security or otherwise;” 10

(c) after clause (xx), the following clause shall be inserted, namely:—

“(xxa) notwithstanding anything to the contrary contained in any other law for the time being in force, the establishment and maintenance of superannuation pension, provident or other funds for the benefit of the employees of the State Bank or dependents of such employees or for the purposes of the State Bank, and the granting of superannuation allowances, annuities and pensions payable out of 20 any such fund;”.

Amendment
of section
34.

5. In section 34 of the principal Act, for sub-sections (3) and (4); the following sub-section shall be substituted, namely:—

“(3) The State Bank shall not discount or purchase or advance or lend or open cash credits on the security of,— 25

(a) any negotiable instrument of any individual or firm payable at the place where it is presented which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership; 30

(b) any negotiable instrument or security (not being an instrument or security in which a trustee may invest trust money under section 20 of the Indian Trusts Act, 1882, or the corresponding provision of the law for the time being in force in any country where the State Bank has a branch) 35 which does not mature within—

(i) fifteen months from the date of such discount, purchase, loan, advance or opening of cash credits, if the instrument or security is drawn or issued for the purpose of financing seasonal agricultural operations; 40 and

(ii) six months from the date aforesaid if the instrument or security is drawn or issued for any other purpose.”.

6. In section 35 of the principal Act, for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:—

Amendment
of section
35.

10 “(2) The terms and conditions relating to such acquisition, if agreed upon by the Central Board of the State Bank and the directorate or management of the banking institution concerned and approved by the Reserve Bank, shall be submitted to the Central Government for its sanction and that Government may by order in writing (hereafter in this section referred to as the order of sanction) accord its sanction thereto.

15 “(3) Notwithstanding anything contained in this Act or any other law for the time being in force or any instrument regulating the constitution of the banking institution concerned, the terms and conditions as sanctioned by the Central Government shall come into effect on the date specified by the Central Government in this behalf in the order of sanction and be binding upon the State Bank and the banking institution concerned as well as upon the shareholders (or, as the case may be, proprietors) and creditors of that banking institution.

25 “(4) If for any reason the terms and conditions cannot come into effect on the date specified in the order of sanction, the Central Government may fix another suitable date for that purpose.

30 “(5) On the date on which the terms and conditions as aforesaid come into effect the business and the assets and liabilities of the banking institution concerned as covered by the acquisition shall, by virtue, and in accordance with the provisions, of the order of sanction stand transferred to, and become respectively the business and the assets and liabilities of, the State Bank.

35 “(6) The consideration for the acquisition of the business and the assets and liabilities of any banking institution under this section may, if so agreed upon, be paid either in cash or by allotment of shares in the capital of the State Bank or partly in cash and partly by allotment of shares, and the State Bank may, for the purpose of any such allotment, increase, subject to the other provisions contained in this Act relating to the increase of capital, the capital of the State Bank by the issue of such number of shares as may be determined by the State Bank.

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(7) Any business acquired under this section shall thereafter be carried on by the State Bank in accordance with the provisions of this Act, subject to such exemptions or modifications as the Central Government may, by notification in the Official Gazette, make in this behalf in consultation with the Reserve Bank: 5

Provided that no such exemption or modification shall be made so as to have effect for a period of more than seven years from the date of acquisition.

(8) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law or in any agreement for the time being in force, on the acquisition of the business and the assets and liabilities of any banking institution under this section, no officer or other employee of that banking institution shall be entitled to any compensation to which he may be entitled under that Act or that other law or that agreement and no claim in respect of such compensation shall be entertained by any court, tribunal or other authority, if on his having accepted in writing an offer of employment by the State Bank on the terms and conditions proposed by it he has been employed in accordance with such terms and conditions. 10 14 of 1947.

(9) The Central Government may, if it considers necessary or expedient in the case of any banking institution in relation to which an order of sanction has been made under this section, appoint, whether before or after the coming into effect of the terms and conditions relating to the acquisition of the business and the assets and liabilities of that banking institution, a suitable person to take over the management of that banking institution for the purposes of winding up its affairs and distributing its assets, and the expenditure incurred in connection with such management (including the remuneration for the person appointed and his staff, if any) shall be paid out of the assets of the banking institution or by the State Bank as the Central Government may direct. 25 30

(10) Simultaneously with the appointment of a suitable person to take over the management of any banking institution under sub-section (9) or immediately thereafter, the Central Government shall issue directions to be followed by that person in the management of that banking institution for the purposes aforesaid and thereupon— 35 40

(a) the provisions of the Companies Act, 1956, or the Banking Companies Act, 1949, or any other law for the time 1 of 1956.
10 of 1949.

being in force or any instrument having effect by virtue of any such Act or law, in so far as they are inconsistent with such directions, shall cease to apply to or in relation to that banking institution;

5 (b) all persons in charge of the management, including any person holding office as manager or director of the banking institution immediately before the issue of such directions, shall be deemed to have vacated their offices as such; and

10 (c) the person appointed to take over the management of the banking institution shall in accordance with those directions take all such steps as may be necessary to facilitate the winding up of its affairs and distribution of its assets.

15 (11) The Central Government, when satisfied that nothing further remains to be done in order to wind up the affairs of any such banking institution, may by another order in writing direct that as from such date as may be specified therein the banking institution shall stand dissolved and thereupon any such direction shall have effect notwithstanding anything to the contrary contained in any other law.

(12) No action under this section shall be questioned on the ground merely of any defect in the constitution of any banking institution in relation to which such action has been taken.

25 (13) In this section "banking institution" includes any individual or any association of individuals (whether incorporated or not, or whether a department of Government or a separate institution), carrying on the business of banking.

7. In section 36 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section
36.

30 " (4) No amount applied for any of the purposes specified in sub-section (2) shall, for the purposes of the Indian Income-tax Act, 1922, be treated as income, profits or gains of the State Bank."

11 of 1922.

8. In section 41 of the principal Act,—

Amendment
of section 41.

35 (a) in sub-section (1), for the words, brackets and figures "sub-section (1) of section 144 of the Indian Companies Act,

1913", the words and figures "section 226 of the Companies Act, 1956" shall be substituted;

7 of 1913.
1 of 1956.

(b) in sub-section (5), for the word "first", the word "annual" shall be substituted;

(c) in clause (d) of sub-section (7), for the words "profit and loss" occurring for the second time, the words "profit or loss" shall be substituted.

Amendment
of section
42.

9. In section 42 of the principal Act, in sub-section (1), for the word "hereinafter", the words "in this Act" shall be substituted.

Amendment
of section
50.

10. In section 50 of the principal Act, for clause (o) of sub-section (2), the following clause shall be substituted, namely:—

"(o) the establishment and maintenance of superannuation pens on, provident or other funds for the benefit of the employees of the State Bank or of the dependants of such employees or for the purposes of the State Bank, and the granting of superannuation allowances, annuities and pensions payable out of any such fund;"

STATEMENT OF OBJECTS AND REASONS

Certain minor amendments in the State Bank of India Act, 1955, have been found necessary in the light of the experience gained since the Bank was originally established in 1955. The amendments proposed are explained in detail in the notes on clauses attached to the Bill.

NEW DELHI;

MORARJI DESAI

The 3rd February, 1959.

Notes on clauses

Clause 2.—Section 22 deals with the disqualifications for appointment as a director of the Central Board of the Bank or local board or local committee. The amendments proposed are intended to remove the prohibition in respect of a legal or technical adviser of the bank being appointed as a member of such boards or committees and to define some of the expressions used in the section.

Clause 3.—The amendment is of a drafting nature.

Clause 4.—Section 33 deals with the business which the bank is permitted to transact. Clause (i) (d) of the section as it stands is capable of being so interpreted as to permit the State Bank to make loans on the primary security of the shares of ordinary joint stock companies. This is not, however, the intention, and the object of the amendment is to clarify the position. Opportunity is also being taken to redraft clause (xii) so as to improve its language.

Clause 5.—The language of sub-sections (3) and (4) of section 34 of the principal Act is somewhat obscure, and it is proposed to redraft these sub-sections, so as to make the meaning clear.

Clause 6.—Section 35 of the State Bank of India Act provides for the acquisition by the State Bank through negotiation of the business of any existing bank. It has, however, been found from actual experience that the procedure for the acquisition which is now prescribed is elaborate and time-consuming, and it is proposed accordingly to redraft the section, so as to simplify the procedure. The amendments provide,—

(a) that if the scheme for the transfer of the assets and liabilities to the State Bank is approved by the boards of directors of the two institutions, such a decision will prevail in spite of any statutory or other provision to the contrary;

(b) that the formal transfer can be made effective through an order of the Central Government, without the necessity of executing elaborate legal documents;

(c) that the residuary institution, after the transfer of its assets and liabilities to the State Bank may, if necessary, be

wound up, according to a simpler procedure than is now prescribed;

(d) that the provisions of section 25F and 25FF of the Industrial Disputes Act, 1947, in regard to retrenchment compensation, which are intended to be applicable in a case in which there is a substantial break in the continuity of employment or a reduction in emoluments or other benefits, will not be applied, in the case of employees whose services are transferred with their consent to the State Bank, on the merger of the institution in which they were previously employed.

Clause 7.—Section 36 of the principal Act provides for certain payments being made to the State Bank of India in reimbursement of the losses incurred by it on the establishment of new branches. It is proposed to clarify the intention that such payments will not be treated as income chargeable to income-tax.

Clauses 4 and 10.—Sub-section (1) of section 50 of the principal Act confers on the Central Board of the State Bank the power to make regulations for the conduct of the affairs of the bank after consultation with the Reserve Bank and with the previous sanction of the Central Government. Among the powers thus specified is a power to establish a pension fund for the benefit of employees who have entered the service of the bank after July 1, 1955. There is some inconsistency between this provision and the provision made in section 30 of the Life Insurance Corporation Act, 1956, read with section 44 *ibid* and it is, therefore, proposed to introduce a new clause (xxa) in section 33 and to redraft section 50(2) (o), so as to make it clear that the new pension fund for fresh entrants to its service can be established by the bank.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (10) of section 35 of the State Bank of India Act, as now proposed, confers on the Central Government power to issue certain directions for facilitating the orderly winding up of banking institutions whose business is taken over by the State Bank of India under that section. It is contemplated that the directions, if any, will be issued only in cases where the residuary company, after it has completely transferred its banking business, will have no further functions to discharge. The delegation of power to the Central Government in such a case to simplify the somewhat elaborate procedure for winding up which is otherwise prescribed by the law is considered to be reasonable.

The new clause (xxa) of section 33, read with sub-section (2) (o) of section 50 as now proposed, clarifies the position in regard to the establishment of certain pension and provident funds for the employees of the bank. The necessary regulations for this purpose will be made within the scope of the power which has already been conferred on the Central Board of the State Bank under section 50(1) of the Act.

The delegation of legislative power in both the cases is of the normal type.

BILL No. 12 OF 1959

A Bill further to amend the Banking Companies Act, 1949.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Banking Companies (Amendment) Act, 1959. Short title
and com-
mencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 of 1949. 2. In section 5 of the Banking Companies Act, 1949 (hereinafter referred to as the principal Act), in sub-section (1),— Amendment
of section 5.

10 (i) after clause (c), the following clause shall be inserted, namely:—

15 ‘(cc) “branch” or “branch office”, in relation to a banking company means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, or where any of the forms of business referred to in sub-section (1) of section 6 is transacted;’;

(ii) for clause (d), the following clause shall be substituted, namely:—

1 of 1956. 20 ‘(d) “company” means any company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act;’;

(iii) for clause (h), the following clause shall be substituted, namely:—

25 ‘(h) “managing director”, in relation to a banking company, means a director who, by virtue of an agreement with

the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called;'

(iv) clauses (i), (k) and (m) shall be omitted;

(v) after clause (n), the following clause shall be inserted, namely:—

"(o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act."

Insertion of new section 5A. 3. After section 5 of the principal Act, the following section shall be inserted, namely:—

Act to override memorandum, articles, etc.

"5A. Save as otherwise expressly provided in this Act,—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."

Amendment of section 6. 4. In section 6 of the principal Act, in clause (b) of sub-section (1), for the words "managing agent", the words "managing agent or secretary and treasurer" shall be substituted.

Amendment of section 7. 5. In section 7 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

"Provided that nothing in this section shall apply to—

(a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of

section 19 whose name indicates that it is a subsidiary of that banking company;

(b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956."

1 of 1956.

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6. In section 10 of the principal Act, in sub-section (1),—

Amendment
of section 10.

(i) in clause (b), for the proviso, the following proviso shall be substituted, namely:—

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"Provided that nothing contained in this clause shall apply to the payment by a banking company of—

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(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

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(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company.";

(ii) in clause (c), for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) who is a director of any other company not being—

(a) a subsidiary of the banking company, or

25

(b) a company registered under section 25 of the Companies Act, 1956:

1 of 1956.

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Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary period not exceeding three months or such further period not exceeding six months as the Reserve Bank may allow."

7. In section 11 of the principal Act,—

Amendment
of section 11.

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(i) in sub-section (1), for the words, "unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by the section", the words "unless it complies with such of the requirements of this section as are applicable to it" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely,—

“(2) In the case of a banking company incorporated outside India—

(a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

(b) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities or partly in cash and partly in the form of such securities an amount which shall not be less than the minimum required by clause (a):

Provided that any such banking company may at any time replace—

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value.”;

(iii) in sub-section (4), the words “the proviso to” shall be omitted.

(iv) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) For the purposes of this section,—

(a) “place of business” means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent;

(b) “value” means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.’

Amendment
of section 12.

8. In section 12 of the principal Act, in sub-section (2), after the words “exercise voting rights”, the words “on poll” shall be inserted.

Insertion of
new section
14A.

9. After section 14 of the principal Act, the following section shall be inserted, namely:—

Prohibition
of floating
charge on
assets.

“14A. (1) Notwithstanding anything contained in section 6, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central Government.

(4) The decision of the Central Government, where an appeal has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred, shall be final."

10 10. Section 15 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

Amendment of section 15.

1 of 1956.

15 " (2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956, a banking company may pay dividends on its shares without writing off the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss."

20 11. For sections 17 and 18 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 17 and 18.

25 "17. (1) Every banking company incorporated in India shall create a reserve fund and unless the amount in such fund together with the amount in the share premium account is not less than its paid-up capital, shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent. of such profit.

Reserve Fund.

30 (2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

35 Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

18. Every banking company not being a scheduled bank shall maintain in India, by way of cash reserve with itself or in current account opened with the Reserve Bank or the State Bank of India

Cash reserve.

or any other bank notified by the Central Government in this behalf or partly in cash with itself and partly in such account or accounts, a sum equivalent to at least two per cent. of its time liabilities in India and five per cent. of its demand liabilities in India, and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on Friday of each week of the preceding month with particulars of its time and demand liabilities in India on each such Friday, or, if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day:

26 of 1881.

Explanation.—In this section and in section 24, “liabilities in India” shall not include—

(a) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(b) any advance taken from the Reserve Bank or from the State Bank of India or from the Refinance Corporation for Industry (Private) Limited, or from any bank notified by the Central Government under clause (c) of the *Explanation* to sub-section (1) of section 42 of the Reserve Bank of India Act, 1934.

2 of 1934.

Amendment
of section 19.

12. In section 19 of the Principal Act, in sub-section (1), after the word “namely”, the words “the carrying on of the business of banking exclusively outside India,” shall be inserted.

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Amendment
of section 22.

13. In section 22 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.”;

(ii) in sub-section (2), in the first proviso, for the words, figure and brackets “sub-section (2)”, the words “this section” shall be substituted.

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(iii) for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:—

“(4) The Reserve Bank may cancel a licence granted to a banking company under this section—

5 (i) if the company ceases to carry on banking business in India or goes into liquidation; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

10 (iii) if at any time, any of the conditions referred to in sub-section (3) is not fulfilled:

15 Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

25 (6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.”.

14. For section 23 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new section
for section 23.

‘23. (1) Without obtaining the prior permission of the Reserve Bank—

Restrictions
on opening of
new, and
transfer of
existing,
places of
business.

35 (a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any

country or area outside India, the location of an existing place of business situated in that country or area:

Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs 5 thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a *mela* or any other like occasion.

(2) Before granting any permission under this section, the 10 Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may 15 be, change of location, of the place of business.

(3) the Reserve Bank may grant permission under sub-section (1) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

(4) Where, in the opinion of the Reserve Bank, a banking 20 company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted 25 under this section.

(5) For the purposes of this section "place of business" includes any sub-office, pay office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent or where any of the forms of business referred to 30 in sub-section (1) of section 6 is transacted.'

Amendment
of section 24.

15. In section 24 of the principal Act,—

(i) in sub-section (1),—

(a) after the words "shall maintain", the words "in India" shall be inserted; 35

(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this section, "unencumbered approved securities" of a banking company shall include its approved securities lodged with 40

another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of;

5 (ii) for sub-section (2), the following sub-section shall be substituted, namely:—

10 “(2) In computing the amount for the purposes of sub-section (1), the deposit required under sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated outside India and any balances main-
tained in India by a banking company in current account with the Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government, including in the case of a scheduled bank the balance required under section 42 of the Reserve Bank of India Act, 1934, to be so maintained, shall be deemed to be cash maintained in India.”;

2 of 1934.

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(iii) in sub-section (3), after the words “its time and demand liabilities”, the words “in India” shall be inserted.

16. In section 25 of the principal Act,—

Amendment
of section 25.

20 (i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

26 of 1881.

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“ (1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of the business on the preceding working day, shall not be less than seventy-five per cent. of its demand and time liabilities in India.

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(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.”;

26 of 1881.

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(ii) in sub-section (3), clause (b) shall be re-lettered as clause (c), and the following shall be inserted as clause (b), namely:—

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“(b) “liabilities in India” shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;”.

Amendment
of section 27.

17. In section 27 of the principal Act, in sub-section (2), for the words "the classification of advances and investments of banking companies in respect of industry, commerce and agriculture", the words "the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture" shall be substituted. 5

Amendment
of section 28.

18. In section 28 of the principal Act, for the words and figures "under section 27", the words "under this Act" shall be substituted.

Amendment
of section 32.

19. In section 32 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— 10

"(1) Where a banking company in any year furnishes its accounts and balance sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance sheet and of the auditor's report, and, in the case of a private company, copies of the balance sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956; and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section". 15 20 1 of 1956.

Amendment
of section 35.

20. To section 35 of the principal Act, the following *Explanation* shall be added, namely:— 25

Explanation.—For the purposes of this section, the expression "banking company" shall include—

(i) in the case of a banking company incorporated outside India, all its branches in India; and

(ii) in the case of a banking company incorporated in India, all its branches whether situate in India or outside India.' 30

Amendment
of section 35
B.

21. In section 35B of the principal Act,—

(i) in clause (a) of sub-section (1), for the words "managing or whole-time director or of a director not liable to retire by rotation", the words "managing director or any other director, whole-time or otherwise" shall be substituted; 35

(ii) to sub-section (1), the following *Explanation* shall be added, namely:—

Explanation.—For the purposes of this sub-section, any provision conferring any benefit or providing any amenity 40

or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive officer by whatever name called or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.”;

(iii) in sub-section (2), for the words, brackets and figures “apply to a banking company after the commencement of the Banking Companies (Amendment) Act, 1956”, the following shall be substituted, namely:—

“apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (1).”.

22. In section 36 of the principal Act, in clause (b) of sub-section (1), for the figures “45”, the figures and letter “44A” shall be substituted. Amendment of section 36.

23. In Part II of the principal Act, after section 36, the following section shall be inserted, namely:— Insertion of new section 36 A.

“36A. (1) The provisions of section 11, sub-section (1) of sections 12, 17, 18, 24 and 25 shall not apply to a banking company— Certain provisions of the Act not to apply to certain banking companies.

(a) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959, has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

(b) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959.

(2) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.

Amendment
of section
36A.

24. Section 36A of the principal Act shall be re-numbered as section 36B.

Amendment
of section
37.

25. In section 37 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Where the Reserve Bank is satisfied that the affairs 5
of a banking company in respect of which an order under sub-
section (1) has been made, are being conducted in a manner
detrimental to the interests of the depositors, it may make an
application to the High Court for the winding up of the com-
pany, and where any such application is made, the High Court 10
shall not make any order extending the period for which the
commencement or continuance of all actions and proceedings
against the company were stayed under that sub-section.

Substitution
of new sec-
tion for sec-
tion 38.

Winding up
by High
Court.

26. For section 38 of the principal Act, the following section 15
shall be substituted, namely:—

“38. (1) Notwithstanding anything contained in section 391,
section 392, section 433 and section 583 of the Companies Act,
1956, but without prejudice to its powers under sub-section (1) 1 of 1956.
of section 37 of this Act, the High Court shall order the winding
up of a banking company— 20

(a) if the banking company is unable to pay its debts;
or

(b) if an application for its winding up has been made
by the Reserve Bank under section 37 or this section.

(2) The Reserve Bank shall make an application under this 25
section for the winding up of a banking company if it is directed
so to do by an order under clause (b) of sub-section (4) of
section 35.

(3) The Reserve Bank may make an application under this
section for the winding up of a banking company— 30

(a) if the banking company—

(i) has failed to comply with the requirements
specified in section 11; or

(ii) has by reason of the provisions of section 22
become disentitled to carry on banking business in 35
India; or

(iii) has been prohibited from receiving fresh depo-
sits by an order under clause (a) of sub-section (4) of

section 35 or under clause (b) of sub-section (3A) of section 42 of the Reserve Bank of India Act, 1934; or

(iv) having failed to comply with any requirement of this Act other than the requirements laid down in section 11, has continued such failure, or, having contravened any provision of this Act, has continued such contravention, beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the Reserve Bank—

(i) a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar."

27. In section 39 of the principal Act, for the words and figures "in section 448", the words and figures "in section 448 or section 449" shall be substituted. Amendment of section 39.

28. After section 39 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 39A.

'39A. (1) All the provisions of the Companies Act, 1956, relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39. Application of Companies Act to liquidators.

(2) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of a banking company.

Amendment
of section
43 A.

29. In section 43A of the principal Act, in sub-section (1), after the words "have been made," the words "or adequate provision to the satisfaction of the High Court for such payments has been made" shall be inserted.

Substitution
of new sec-
tion for sec-
tion 44.

30. For section 44 of the principal Act, the following section shall be substituted, namely:—

Powers of
High Court
in voluntary
winding up.

"44. (1) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956, no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue. 10 I of 1956.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the court. 15

(3) Without prejudice to the provisions contained in sections 441 and 521 of the Companies Act, 1956, the High Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:— 20 I of 1956.

(a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or 25

(b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued without detriment to the interests of the depositors." 30

Omission of
section 45K.

31. Section 45K of the principal Act shall be omitted.

Amendment
of section
45O.

32. In section 45O of the principal Act, in sub-section (2), after the words "accrual of such claims", the words "or five years from the 35

date of the first appointment of the liquidator, whichever is longer" shall be inserted.

33. In section 46 of the principal Act,—

Amendment
of section 46.

(i) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, every director, liquidator and other officer of the company and any other person who is knowingly a party to the contravention or default shall be punishable with fine which may extend to five hundred rupees, and where a contravention or default is a continuing one, with a further fine which may extend to fifty rupees for every day during which such contravention or default continues.";

(ii) sub-section (5) shall be omitted.

34. In section 49 of the principal Act, for the words, figures and brackets "sections 90, 165 and 255, clauses (a) and (b) of sub-section (1) of section 293 and sections 300 and 416 of the Companies Act, 1956", the following shall be substituted, namely:—

Amendment
of section 49.

"sections 90, 165, 182, 204 and 255, clauses (a) and (b) of sub-section (1) of section 293 and sections 300, 384 and 416 of the Companies Act, 1956."

35. After section 49 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
49A, 49B and
49C.

"49A. No person other than a banking company, the State Bank of India or any other banking institution notified by the Central Government in this behalf shall accept from the public deposits of money withdrawable by cheque:

Restriction on
acceptance of
deposits with-
drawable by
cheque.

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

49B. Notwithstanding anything contained in section 21 of the Companies Act, 1956, the Central Government shall not signify its approval to the change of name of any banking company unless the Reserve Bank certifies in writing that it has no objection to such change.

Change of
name by a
banking
company.

49C. Notwithstanding anything contained in the Companies Act, 1956, no application for the confirmation of the alteration of

Alteration of
memorandum
of a banking
company.

the memorandum of a banking company shall be maintainable unless the Reserve Bank certifies that there is no objection to such alteration."

Amendment
of section 42
of the Reserve
Bank of India
Act, 1934.

36. In section 42 of the Reserve Bank of India Act, 1934, in the 2 of 1934.
Explanation to sub-section (1), for clause (c), the following clause 5
shall be substituted, namely:—

'(c) "liabilities" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Bank or from the Refinance Corporation for Industry (Private) Limited, 10
or from the State Bank or from any other bank notified by the Central Government in this behalf.'

STATEMENT OF OBJECTS AND REASONS

The Banking Companies Act, 1949, came into force on the 16th March, 1949, and although it was amended in December, 1956, with a view to extending the powers of supervision and control exercisable by the Reserve Bank, the question of further amending the Act, in order to remove minor omissions or ambiguities in the meaning of certain sections was left over for consideration at a later stage. It is now proposed, in the light of the experience gained in regard to the administration of the Act, to introduce some amendments, mostly of a non-controversial nature, in order to facilitate the application and enforcement of the Act. Opportunity has also been taken to clarify the position regarding the application of the Act to banking companies which have been prohibited from accepting fresh deposits and are in consequence not functioning normally.

MORARJI DESAI.

NEW DELHI;

The 2nd February, 1959.

Notes on clauses

A brief account of the amendments which are now proposed to the Banking Companies Act is given in the notes on clauses below.

Clause 2.—Some difficulty has been experienced in the absence of a definition of the words “branch” or “branch offices” which occur in some sections of the Act and it is, therefore, proposed to insert a definition of these words, the criterion for the definition being whether banking business, as generally understood, is transacted at an office. Some other expressions, already defined in the Banking Companies Act, have since been defined in the Companies Act, 1956; and it is, therefore, proposed to make these later definitions in the Companies Act applicable wherever there is no inconsistency. A special definition of the words “managing director” has however been proposed, in order to exclude directors of banking companies, who are entrusted with supervisory functions in regard to some, but not all, of the activities of a bank.

Some partnership or proprietary concerns, which have been carrying on the business of banking, but are not subject to the control exercised by the Reserve Bank of India under the Banking Companies Act, have been and are using names and styles which include words like “bank”, “banker” or “banking”. It is not considered necessary at this stage to extend to partnerships and individuals the prohibition in respect of the use of words like “bank”, “banker”, etc., which now applies to all incorporated companies, or to bring such partnerships, etc., within the scope of the Banking Companies Act. The definition of a company, in section 5(1) (d) of the Banking Companies Act is proposed to be modified suitably in order to make this clear.

Clause 3.—A new section, namely, 5A is proposed to be added, on the lines of section 9 of the Companies Act, in order to clarify the position that the Banking Companies Act will prevail, if necessary, against any other provision in the memorandum or articles of association of a banking company.

Clause 4.—According to the existing scheme of the Act, a banking company is prevented from being a managing agent of any other company. The amendment is intended to prohibit a banking company from being secretaries and treasurers also.

Clause 5.—The amendment is intended to clarify the position that subsidiaries of banking companies, formed in accordance with the provisions of the law, are not prevented from using the names “bank”, “banking”, etc.

Clause 6.—Section 10 of the Banking Companies Act prohibits the employment by a banking company of persons remunerated on a commission basis. It is proposed to clarify the intention that this prohibition is applicable only in the case of regular members of the staff.

It has also been considered necessary in the light of experience, to exempt from the scope of the restrictions in section 10 the officiating appointment, for a period which will not exceed nine months in any case, of managers or managing directors, who in respect of such temporary appointments may find it difficult to comply with the provisions of the section.

Clause 7.—The amendments are of a drafting nature, and provide for a prohibition, in a positive form, of any withdrawal by a foreign banking company of the cash or securities required under the Act to be deposited with the Reserve Bank of India.

Clause 8.—The amendment is clarificatory and is intended to bring the provisions in section 12 of the Banking Companies Act in regard to voting on a show of hands into line with section 87 and para 56 of Schedule I to the Companies Act, 1956.

Clause 9.—Section 14 of the Banking Companies Act, prohibits a banking company from creating a charge on its unpaid capital. It is considered desirable, in the interests of depositors, to prevent also the creation of a floating charge on the undertaking or any property of the company, without the prior consent of the Reserve Bank of India.

Clause 10.—Section 15 of the Banking Companies Act contemplates that a banking company should maintain its capital intact, by making good from its profits any impairment thereof, before dividends are declared. It is proposed to exempt banking companies specifically from any requirement, direct or implied, that depreciation on approved securities should be written off fully, before other appropriations from profits are made, if the securities concerned have not been sold and if a loss has not actually been incurred.

Clause 11.—The interpretation of section 17 of the Banking Companies Act, which deals with the reserve fund of a banking company has given rise to some difficulty, as it has been held that the

fund has to be maintained intact, and cannot, therefore, be drawn upon, even for the purposes for which it was originally intended. The amendments now proposed are intended to introduce some degree of flexibility in regard to the maintenance and use of the fund.

Section 18 of the Act provides for the maintenance of a minimum cash reserve by non-scheduled banks. It is proposed to clarify the intention that the reserve should be held in India. Provision has also been made for the reserve being held in the form of a deposit with the State Bank of India, or a notified bank, where this is convenient to a non-scheduled bank.

Clause 12.—The statutes of certain foreign countries require banks which propose to carry on business in those countries to incorporate themselves under the applicable local laws. Section 19 (1) of the principal Act is, therefore, proposed to be amplified, so as to enable Indian banks which are desirous of opening offices abroad to comply with the requirements of foreign laws.

Clause 13.—Section 22 of the Banking Companies Act deals with the licensing of banking companies, and has been redrafted so as to provide for conditional licences being granted. Opportunity has also been taken to indicate in somewhat greater detail, in compliance with the principles of natural justice, the circumstances in which a licence may be cancelled.

Clause 14.—In section 23, which deals with the opening of branches, provision has been made, as in section 22, for the grant of conditional licences. Opportunity has also been taken to recast the section so as to avoid the doubts arising out of the punctuation in the existing section.

Clause 15.—Section 24 of the principal Act provides for the maintenance of a minimum percentage of liquid assets, including the cash reserve referred to already, under clause 11 above. The amendments proposed are intended to clarify the position that the assets in question must be maintained in India. For the purposes of this section, securities pledged to another bank in respect of a loan obtained from that bank will be treated as approved and unencumbered securities to the extent to which they are not drawn against but only the current account balances, if any, maintained with the State Bank or other notified banks will be treated as assets for the purposes of the section. Certain minor drafting improvements have also been made.

Clause 16.—The object of the amendment is to provide that all the returns under the Act will be as on a Friday.

Clauses 17 and 18.—The amendments proposed are verbal, and are intended to improve the language of section 27, and to extend the scope of the publication of information in relation to banks, which is contemplated in section 28.

Clause 19.—The amendment is clarificatory, and is intended to harmonise the provisions of section 32 of the Banking Companies Act with those contained in section 220 of the Companies Act.

Clause 20.—Section 35 of the Banking Companies Act provides for an inspection of banking companies by the Reserve Bank of India. Specific provision for the inspection of offices outside India of Indian banks is proposed to be made in this section.

Clause 21.—Section 35B of the Banking Companies Act provides for the approval by the Reserve Bank of India of the appointment and remuneration of managing or whole-time directors and chief executive officers of banking companies. It is proposed to provide for control being exercised over the remuneration of ordinary directors also, as under the Companies Act, and to ensure in addition that the effect of the provisions is not nullified in practice by the grant of post-retirement benefits without the approval of the Reserve Bank.

Clause 22.—The reference to section 45 in the existing section 36 is wrong and is being corrected.

Clause 23.—The existing position in regard to banking companies, which have been prohibited from carrying on the business of banking currently is not very satisfactory. The provisions proposed are intended to clarify the position regarding the applicability of the Banking Companies Act to institutions to which a licence has been refused or which have been otherwise prohibited from accepting fresh deposits, etc.

Clause 25.—It is desirable to restrict the further extension of the period of moratorium, if any, which is granted to a banking company after it has suspended payments, if the Reserve Bank is of the opinion that any such extension will not be in the interests of the depositors. Provision has been made accordingly.

Clause 26.—The drafting of section 38 has been criticised by a High Court and a redraft has been proposed, in order to remove the existing difficulty in interpretation. Opportunity has also been taken to extend the Reserve Bank's powers to apply to the court for the winding up of banking companies, wherever this is considered necessary.

Clauses 27 and 28.—The existing position under the law is that in lieu of the Official Liquidator appointed under the Companies Act, 1956, non-official liquidators, if any, already appointed before the 1st April, 1956, may continue in office, and if it is considered necessary, either a Court Liquidator to be in charge of the banking companies generally, or a special liquidator for any particular banking company may also be appointed. The amendments are intended to provide for the exercise by any liquidator appointed for a banking company of all the powers and functions of the Official Liquidator under the Companies Act, 1956, and to clarify the position that fees may be realised, as under the Companies Act, from the companies which are in liquidation, towards the expenses of the liquidation organisation.

Clause 29.—Section 43A of the Banking Companies Act, which deals with preferential payments by a company in liquidation, provides for the depositors of the company being paid after the preferential payments have been made. It is not considered desirable, where provision for any such preferential payments has been made, that payments to the depositors should be held up, merely because of any delay in the actual disbursement of any amount due towards preferential claims. The existing wording in this section is, therefore, proposed to be suitably amended.

Clause 30.—Section 44 of the principal Act which imposes certain restrictions on the voluntary winding of banking companies is now applicable only to banking companies to which a licence has been granted. It is proposed to provide for the restriction being applicable to all banking companies generally and to enhance the powers of the High Court in relation to the control of winding up proceedings under this section.

Clause 31.—The amendment is of a drafting nature.

Clause 32.—The special period of limitation which has now been prescribed in relation to the claims by or on behalf of banking companies in liquidation does not cover the case of banks, the claims of which are already time-barred on the date of the winding up order. Appropriate provision in relation to such banks is, therefore, being made.

Clause 33.—It has been noticed that the returns filed by banking companies in liquidation are in several cases incomplete and unsatisfactory. The penalties leviable under the section are, therefore, being extended, so as to ensure compliance with the requirements of the statute by certain officers to whom it does not now specifically apply.

Clause 34.—The amendments proposed are intended to prevent a private banking company from restricting the voting rights of its members and also from appointing firms or bodies corporate to an office of profit (the prohibition in regard to these matters already applies to all public limited companies, including those engaged in banking).

Clause 35.—A new section, namely, 49A is proposed to be inserted in the Act in order to restrict the power to open or operate accounts on which cheques may be issued to:—

(a) banking companies which are governed by the Act;
and

(b) Government, which has introduced the system of withdrawal by cheques at postal savings banks at several important towns, and proposes to extend the facility in due course.

Certain safeguards preventing the conversion of banking companies into non-banking companies without the knowledge or approval of the Reserve Bank are also being provided.

Clause 36.—The provisions contained in sections 18 and 24 of the Banking Companies Act require a company to which the Act is applicable to maintain certain minimum percentages of its liabilities in the form of cash or other approved forms generally. The deposits maintained by scheduled banks with the Reserve Bank of India under section 42 of the Reserve Bank of India Act are treated as eligible assets for the purposes of these provisions. It is proposed to amend section 42 of the Reserve Bank of India Act and also sections 18 and 24 of the Banking Companies Act so as to provide that loans obtained by banking companies from the Refinance Corporation will not be treated as liabilities for the purposes of these sections.

M. N. KAUL,
Secretary.

